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Report Series 1991

91-5 AMO's Response To: "Rent Control: Issues and Options"

Association of Municipalities of Ontario

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MISSION STATEMENT

AMO unites Ontario's municipalities.

We take pride in promoting, supporting and enhancing strong and effective municipal government.

We provide strategic leadership by:

- developing and effectively promoting responsive quality policy;
- informing and educating governments, the media and the public;
- marketing innovative and beneficial services.

Our elected representatives, municipal officials and association staff form a team which values and respects:

- diversity and local autonomy;
- fairness and equity;
- consultation;
- consensus;
- co-operation.

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EXECUTIVE SUMMARY

In February 1991, the Ministry of Housing released its consultation paper, *Rent Control: Issues and Options.* The paper presents options and preferred approaches for addressing nine rent control issues towards the development of new permanent legislation.

AMO has not involved itself in the debate as to the appropriateness of rent control which is essentially a provincial policy responsibility. Therefore, in this response AMO continues to concentrate on the impacts on the municipal sector as a result of the proposed rent control policy options and approaches. In particular, AMO has focused on three of the issue areas: capital expenditures, maintenance and rental housing protection.

AMO developed the following six main positions to serve as the basis of its review of the consultation paper. These basically summarize AMO's response and are not listed in any order of priority:

Rent Control Policy - A Provincial Responsibility

AMO continues to support that rent control is a provincial policy responsibility and that municipalities should not get involved in landlord-tenant issues.

Continue Precedence of Municipal Property Standards Bylaws

It is AMO's position that nothing in the rent control system should prevent municipalities from implementing and enforcing their municipal property standards by-laws. In recognition of the importance of local demands being reflected in local by-laws, AMO supports the continuation of the existing system where municipalities have permissive authority to pass and enforce property standards by-laws. Furthermore, AMO also agrees that municipalities should be encouraged to pass and enforce their own property standards bylaws.

Support a Mechanism for Approving Necessary Capital Expenditures

The Association believes that changes to rent control legislation must ensure the promotion of quality rental housing and therefore AMO agrees that there needs to be a mechanism to protect rental properties from deterioration. Accordingly the Association supports some means of financing "necessary" capital expenditures. In support of the previous position, AMO believes that the basis for determining "necessary" capital expenditures should be the municipal property standards

by-law (where it exists) and the provincial standard in those municipalities which do not have a property standard bylaw. In addition to the property standard, there should be a provincial guideline for repairs needed to extend the life of a building.

No Additional Costs to Municipalities

One fundamental question that needs to be answered with respect to establishing a mechanism for financing capital expenditures is not only the definition of what is "necessary" but also who will be responsible for the inspections and costs required to administer such a mechanism.

AMO's position is that whatever the mechanism for the financing of capital expenditures the cost of this should "not be dumped on the backs of municipalities." If municipal property standards officers are to be involved in what is essentially a rent control related decision then their services should be performed on a fee for services basis.

Continued AMO Representation

There are some options in the consultation paper for changing the responsibilities of the Residential Rental Standards Board. AMO would want continued representation in any new system.

Local Policies in Support of Rental Housing Protection

AMO did not support the *Rental Housing Protection Act (1986)* and argued that the blanket approach of the *Act* was inappropriate and infringed on the local autonomy of municipalities. AMO continues to support that every community has its own unique housing situation and, as the local level of government, municipal councils are best able to determine policies for rental housing protection within their own communities. Therefore, AMO does not support proposals in the consultation paper for "stronger provincial direction" in the municipal administration of the RHPA or the extension of the *Act's* coverage.

1 Basis of AMO's Response

1.1 Introduction

In the past AMO has not involved itself in the debate as to the appropriateness of rent control. The Association's involvement in this issue only began in 1986 when Bill 51, The *Residential Rent Regulation Act* was introduced. From 1986 to 1989 AMO presented its positions and concerns about this Act, specifically the provisions pertaining to maintenance issues, property standards and the establishment of the Residential Rental Standards Board.

AMO's response to the consultation paper, *Rent Control: Issues and Options*, concentrates on municipal responsibilities suggested in the consultation paper and impacts on the municipal sector as a result of the proposed policy options and approaches. In particular, AMO has focused on three of the issue areas: capital expenditures, maintenance and rental housing protection. On the other six issue areas AMO has provided some comments where appropriate.

1.2 AMO's Main Positions

AMO has developed six main positions as the basis of its response to the proposed rent control policy options. The six main positions are discussed below and are not listed in any order of priority:

Rent Control Policy - A Provincial Responsibility

Continue Precedence of Municipal Property Standards Bylaws

Support a Mechanism for Approving Necessary Capital Expenditures

No Additional Costs to Municipalities

Continued AMO Representation in New System

Support Local Policies for Rental Housing Protection

Rent Control Policy - A Provincial Responsibility

AMO continues to support that rent control is a provincial policy responsibility and that municipalities should not get involved in landlord-tenant issues. Therefore, AMO has not taken a position on many of the issues related to rent regulation but has provided some comments to assist the Provincial Government in its review of options.

Continue Precedence of Municipal Property Standards Bylaws

Municipalities have a direct interest in maintaining property standards in their communities. The Association has been most concerned in the past with regards to the impact of rent control policy on local municipal property standards by-laws and enforcement. It is AMO's position that nothing in the rent control system should prevent municipalities from implementing and enforcing their municipal property standards by-laws.

This was resolved in the development of the existing legislation by the creation of a system where provincial property standards are only applicable to those municipalities without property standards by-laws. The provincial standard only applies to those municipalities which choose not to have property standards bylaws.

In recognition of the importance of local demands being reflected in local by-laws, AMO supports the continuation of this system where municipalities have permissive authority to pass and enforce property standards by-laws. Furthermore, AMO also agrees that municipalities should be encouraged to pass and enforce their own property standards bylaws.

Support a Mechanism for Approving Necessary Capital Expenditures

As stated above, municipalities have a direct interest in the maintenance of property. AMO expressed this in its response to Bill 4 which focuses on the economic benefits of rent control, that is the protection of tenants from high rent increases. However, AMO has argued that little attention has been given to quality of life issues such as the adequacy of the existing rental stock in meeting the accommodation needs of tenants. AMO is concerned that Bill 4 will discourage landlords from maintaining their buildings leading to a decline in the quality of tenants' housing. Therefore, the Association believes that changes to rent control legislation must ensure the promotion of quality rental housing.

Consequently, AMO agrees that there needs to be a mechanism to maintain the quality of rental housing and protect rental properties from deterioration. Accordingly the Association supports some means of financing "necessary" capital expenditures. In support of the previous position, AMO believes that the basis for determining "necessary" capital expenditures should be the municipal property standards by-law (where it exists) and the provincial standard in those municipalities which do not have a property standard bylaw. In addition to the property standard, there should be a provincial guideline for repairs needed to extend the life of a building.

No Additional Costs to Municipalities

Municipalities have paid the costs of enforcing their property standards. One fundamental question that needs to be answered with respect to establishing a mechanism for financing capital expenditures is not only the definition of what is "necessary" but also who will be responsible for the inspections and costs required to administer such a mechanism.

AMO's position is that whatever the mechanism for the financing of capital expenditures the cost of this should "not be dumped on the backs of municipalities." If municipal property standards officers are to be involved in what is essentially a rent control related decision then their services should be performed on a fee for services basis.

Continued AMO Representation

There are some options in the consultation paper for changing the responsibilities of the Residential Rental Standards Board. AMO would want continued representation in any new system.

Local Policies in Support of Rental Housing Protection

AMO did not support the *Rental Housing Protection Act (1986)* and argued that the blanket approach of the *Act* was inappropriate and infringed on the local autonomy of municipalities. AMO continues to support that every community has its own unique housing situation and, as the local level of government, municipal councils are best able to determine policies for rental housing protection within their own communities.

2 AMO's Responses to Issues and Options for Rent Control

The following covers the nine main issue areas identified in the consultation paper. Where applicable, the Preferred Approach proposed by the Ministry of Housing is summarized and followed by AMO's response.

2.1 Scope of Rent Control

2.1.1 Coverage - what should be included

Preferred Approach

Follow the general coverage of Landlord and Tenant Act with two exceptions:

- Cover accommodation component of care facilities such as unlicensed rest and retirement homes; these are not covered by Landlord and Tenant Act.
- Continue to exclude non-profit housing units which are subject to Landlord and Tenant Act.

AMO's Response to Preferred Approach

AMO believes that covering the accommodation component of unlicensed rest and retirement homes under rent control has numerous implications. For example, there is some concern with extending rent control to those facilities which are currently subsidized by municipalities through the domiciliary hostel program. Contracts stipulate a per diem and the nature of the residential care, and funding is provided under the *General Welfare Assistance Act*. Therefore, this should be subject to further considerations of the Commission of Inquiry into Unregulated Residential Accommodation as suggested in the consultation paper. While it is not clear whether the Commission of Inquiry will be looking at accommodation costs, there is a need to address the significant rent increases occurring in some rest and retirement homes in conjunction with the regulation of their standards of care.

AMO also agrees with continued exclusion of non-profit housing. The Association would like to comment that current Maximum Unit Prices (MUPs) are insufficient in their coverage of the costs of maintaining

non-profit housing units. Therefore, until such time as this system of funding social housing is improved, non-profit housing units should be excluded from rent control.

2.1.2 Determining if a unit is covered by rent control

Preferred Approach

Combine the application to determine coverage with that to determine the rent level.

AMO's Response to Preferred Approach

The Association has no comment on this item as it is primarily a landlord-tenant issue and a matter of provincial policy.

2.2 Annual Rent Increases

2.2.1 Basis of annual rent increase

Preferred Approach

Establish a flexible rent control guideline with a cap to prevent an increase that is too high in any year. This means capping an inflation-based rent-controlled guideline.

AMO's Response to Preferred Approach

Some municipalities have indicated a preference for regionally-based guidelines rather than a provincial average, like with establishment of Maximum Unit Price's (MUPs), to more adequately reflect costs and not the consumer price index.

The Minister has indicated that the Provincial Government supports a province-wide guideline for allowable annual rent increases and wants to avoid different indices for different regions of the province. The factors justifying increases above the guidelines (e.g. extraordinary operating costs such as municipal taxes, heating, hydro, etc.) are expected to recognize regional cost differences with the possibility for landlord appeal.

2.2.2 Timing of annual rent increases

Preferred Approach

A common rent date for each residential rental complex and a single and common rent increase anniversary date for every unit in a complex.

AMO's Response to Preferred Approach

The Association has no comment on this item as it is primarily a landlord-tenant issue and a matter of provincial policy.

2.3 Increases Above the Guideline

2.3.1 Factors justifying increases above the annual guideline

Preferred Approach

In recognition of certain regional cost differences, rent increases above the guideline could be permitted if there were a significant increase in operating costs for municipal taxes, hydro, water, and heating. To be eligible a cost increase would have to be more than 50% of that recognized in the guideline and there would be an overall cap on increases in any one year similar to the overall guideline cap.

The Preferred Approach states that there should be no increase above the guideline for interest rate changes, equalization, financial loss, hardship relief, economic loss, catch up for below market rents, maintenance costs and consultants' and other fees.

AMO's Response to Preferred Approach

The Association has no comment on this item as it is primarily a landlord-tenant issue and a matter of provincial policy.

2.4 Capital Expenditures

This section addresses issues and options without indication of a Preferred Approach.

2.4.1 Funding capital expenditure work

Options Considered

- A cost pass through to rents; increased rents based on capital repair costs.
- A rate of return on investment; recognition of a rate of return on a landlord's investment in capital works.
- Increased guideline amounts for capital expenditures; permitted rent increase for all rents for capital expenditures.
- Reserve funds; set aside and accumulated for capital repairs which could be building-specific or province-wide.
- Government programs; e.g. Low Rise Rehabilitation Program.

AMO's Response to Options

One of the difficulties of responding to these options and those in the next section (2.4.2) is that there are numerous combinations of the various options possible. AMO has chosen to simply comment on each and note any concerns. AMO would also like to add that many of these items are landlord-tenant issues and a matter of provincial policy, but in some cases have impacts on municipalities and therefore the Association has provided comments.

As indicated in the Association's main positions, AMO agrees with some mechanism for financing capital expenditures. Of the options presented, AMO agrees with the following, listed in no particular order of priority:

- A cost pass through of capital expenditures.
- The concept of reserve funds on a building-specific basis. However, AMO is concerned that

this will only address the longer term and will not be sufficient to meet immediate needs.

- Continued support for Provincial Government programs such as the Low Rise Rehabilitation Program. AMO recommends that this should be expanded to include more buildings and allow for flexibility to municipalities for determining allocations (e.g in some cases should be able to apply to 6-storey apartment buildings).

2.4.2 Limitations on capital expenditures

Options Considered

- Permit only capital expenditures and funding for what is defined as "necessary" (as opposed to "luxury").
- Require tenant approval for repairs, either for just "luxury" and/or "necessary" repairs.
- Impose a "cap" on allowances for capital expenditures; that is, in a cost pass through system, allowances for capital expenditures could be capped.
- Separate and remove allowances for capital expenditures; that is, remove the compounding effect of successive capital expenditures.

AMO's Response to Options

Determination of necessary$capital expenditures

In support of the Association's basic position, the basis for the determination of "necessary" capital expenditures should be municipal property standards by-laws (where they exist) and the provincial standard in those municipalities which do not have a property standard bylaw. In addition to the property standard there should be a provincial guideline for repairs needed to extend the life of a building (for example the guidelines used in the Low Rise Rehabilitation Program (LRRP)). AMO suggests that there should be a broad consultation process with landlords, tenants, and municipalities to determine what this guideline should be.

Who will determine necessary capital expenditures?

AMO believes that where there is landlord-tenant agreement on necessary or luxury repairs then there need not be any third party inspection or evaluation. However, there needs to be some form of independent assessment of necessary capital expenditures if there is no agreement between the landlord and tenant. This could be the municipal property standards officer but as stated in the Association's basic position if municipal property standards officers are to be involved in what is essentially a rent control related decision then their services should be performed on a fee for services basis.

2.4.3 Transition

Options Considered

The issue here is how to determine whether the new solution to capital expenditures should apply to capital work commenced or completed prior to the new legislation. The options proposed include retroactivity or after new legislation.

AMO's Response to Options

As stated in reference to Bill 4 AMO does not support retroactivity. The Minister has responded that all rent control legislation (that enacted under both the Davis and Peterson administrations) has been retroactive; there is no date which can be chosen which will not be retroactive. In order to address concerns about retroactivity, the Ministry is looking at an appeal mechanism for landlords.

2.5 Maintenance

2.5.1 How to ensure adequate maintenance of rental premises

This section notes that under the *Planning Act* municipalities may pass maintenance and occupancy by-laws to establish maintenance and property standards with enforcement the municipality's responsibility. 440 municipalities of the 792 which have the power to do so have such by-laws.

The Residential Rental Standards Board (RRSB) was established to help ensure that minimum maintenance standards were met. Provincial Rental Housing Maintenance Standards were established for those areas without municipal maintenance bylaws "that were adequate or adequately enforced". The RRSB reviews municipal and other work orders and refers matters of substantial non-compliance with a substantial standard to Ministry for determination of whether a rent penalty should be imposed. Where the provincial maintenance standard is in effect, the RRSB can order work done and refer THE matter to the Ministry for rent penalties if there is non-compliance.

Therefore, as the consultation paper notes, there are three levels of maintenance enforcement: municipal inspection and enforcements; RRSB review for compliance; and Ministry review for rent penalty. Going through this 3-stage process has taken on average 8.5 months upon receipt of a work order by the RRSB to issuance of a rent penalty.

Options Considered

The options proposed include making it mandatory that municipalities have and enforce minimum maintenance standards. Where a municipality fails to meet provincial standards of enforcement, where it contracts with the province or where there is no municipal organization then a provincial standard could be enforced. This would provide greater consistency and compliance. But the consultation paper notes that this is a change from the current system where municipalities are not required to have such bylaws and can adjust enforcement to reflect community standards and conditions.

A second option proposes the introduction of a code for existing buildings to establish province-wide maintenance standards and methods of enforcement. This would ensure greater consistency but would not reflect local variations and community standards. It is argued that such a standard could be higher than that which exists across the province and could require costly repairs and upgrades to achieve full compliance.

A final option is the establishment of rent penalties such as no annual guideline increase.

Preferred Approach

- Retain the functions of RRSB but that those functions be combined administratively with

decisions on rent penalties. This would permit continuation of the system of municipal bylaws that would have the ability to reflect and enforce community standards.

- To assist municipalities in enforcing their bylaws, changes could be made to provide more effective powers of entry and repair and an increased ability to recover the cost of repairs undertaken by the municipality on an emergency basis. It is noted that other legislation may have to be amended to achieve this.

- A model by-law could be developed to assist municipalities in developing their own maintenance standards and enforcement policies.

- These options would not preclude development of a code for existing buildings which "may in the long term be a desirable approach".

- Where there are no such bylaws and enforcement, provincial standards would be determined and imposed.

- Enforcing municipal and provincial standards would be assisted through stronger rent penalties denying rent increases or reducing maximum rent where maintenance standards are not met. Fines could be imposed for failure to comply with municipal and provincial maintenance standards or for charging tenants for maintenance.

AMO's Response to Preferred Approach

AMO has no problem with the rationale for extending the functions of the RRSB to include decisions on rent penalties. However, AMO is concerned that the RRSB will become increasingly involved in landlord-tenant disputes. For example, it could become the body to which a tenant or landlord would appeal the decision of an inspector on the determination of a "necessary" improvement. In this way it could become more like a quasi-judicial body such as the Ontario Municipal Board as opposed to a board involved in the review of maintenance-related issues. It is difficult to assess these implications until more information is available on the new terms of reference for the RRSB. Also, later in the consultation paper a Rent Control Advisory Committee is described as a preferred approach to improve decision-making and conflict resolution. Again the terms

of reference of this group are not clear or how it will relate to the RRSB. Finally, AMO also questions whether the current structure of the RRSB could accommodate the increased work load that will result from its expanded role.

AMO supports the continuation of the current system where municipalities can pass and enforce property standards by-laws. The Association also welcomes more effective powers of entry and repair and an increased ability to recover costs of repairs undertaken on an emergency basis. However, municipalities would require capital to undertake these repairs as well as the ability to collect costs. Currently, municipalities are often not able to collect costs that are applied against the property taxes of a landlord. Therefore, AMO sees that these are all vital tools but not the answer to ensuring adequate maintenance.

AMO would like to comment on the proposal to further consider a code for existing buildings. AMO understands that the Ministry of Housing is looking at this proposal in the context of its review of amendments to the Building Code. AMO agrees with the need for the Provincial Government to better coordinate its nineteen different regulations (e.g. fire code, building code, elevator regulations, etc.) that currently exist for buildings and which are administered by numerous ministries. However, this should not interfere with the precedence of municipal property standards bylaws which have been developed in this Province over the last 25 years, and for which the main problems have been those of enforcement. AMO would like to reiterate the importance of addressing locally-specific conditions in municipal property standards bylaws which are responsive to changes and not nearly as onerous to amend (within a matter of weeks) as a provincial code. As stated in the consultation paper there is a need to reflect local variations and community standards.

AMO therefore believes that if a code for existing buildings is to be developed then it should not supersede municipal property standards bylaws, and in this way work like the existing provincial property standard which applies only to those municipalities without their own bylaw.

A final issue AMO would like to raise is that related to elevator maintenance and repairs. Some municipalities have expressed concerns about elevator

maintenance and repairs and problems with the elevator devices division of the Ministry of Consumer and Commercial Relations. AMO suggests that the Ministry of Housing needs to address this and that the Provincial Government should have the power to issue work orders for the repair of elevators.

2.6 Rent Reduction

AMO's Response to Preferred Approaches

The Association has no comment on the items related to rent reduction as they are primarily landlord-tenant issues and a matter of provincial policy.

2.7 Rent Information

AMO's Response to Preferred Approaches

The Association has no comment on the items related to rent information as they are primarily landlord-tenant issues and a matter of provincial policy.

2.8 Decision-making Mechanisms and Administrative Structure

2.8.1 Dispute resolution system

Preferred Approach

Establish a system where rent decisions are resolved at a hearing with appeals to the courts limited to questions of law. To support the administration of the system, provision should be made for some costs recovery through fees.

2.8.2 Assistance to landlords and tenants by improving the process

Preferred Approach

Provide funding to landlord and tenant groups. The hearings process should be improved by having the power to have discretionary mediation and prehearings. A Rent Control Advisory Committee should be created consisting of landlord, tenant and municipal representatives (like that of the RRSB). This group could act as a vehicle for monitoring trends and reflecting public opinion.

AMO's Response to Preferred Approaches

As stated previously, AMO has some questions regarding the terms of reference for the Rent Control Advisory Committee and its relationship to the RRSB. In general, AMO supports some mechanism for resolving landlord-tenant disputes in order to ensure that buildings are maintained. This is consistent with AMO's position that municipalities should not get involved in resolving these disputes nor should they pay for the administration of rent decisions. Therefore the Association has no further comment on this issue as it is primarily a landlord-tenant issue and a matter of provincial policy.

One suggestion AMO would like to mention for the resolution of landlord and tenant disputes (which often end up being mediated by local politicians) is a complaints process such as the Rentalsman Program in British Columbia which provides a "due process". One means of financing this could be a small surcharge on rents to create a pool of money to both improve inspections and pay for a Rentalsman / ombudsman for the benefit of tenants. These moneys could also pay for tenant advocacy.

2.8.3 Improved enforcement

Preferred Approach

The following additional offenses be provided:

- failure to obey maintenance or standards orders issued by provincial rent regulators;
- building superintendents collecting key money;
- knowingly charging illegal rents;
- harassing tenants; and,
- hindering inspections.

AMO's Response to Preferred Approach

The Association agrees with improving enforcement of maintenance or standards orders. The additional offenses of failure to obey maintenance or standards orders issued by provincial rent regulators; and, hindering inspections would assist in enforcement.

2.9 Rental Housing Protection

2.9.1 Revision of the Current Statutory Framework

The Rental Housing Protection Act (RHPA) was introduced in 1986 to protect loss of rental housing due to conversions to condominiums, conversions to co-ops, conversions to transient accommodations such as hotels, motels or apartment hotels, conversions to non-residential, or demolition for redevelopment. Under the RHPA a landlord must make an application to municipal council for approval to cover all or part of a rental property or to demolish, renovate or sever the rental property.

The application of the RHPA restricted by the population of the municipality, the size of the rental property and other factors. Most provisions of the Act apply only to municipalities with a population of 50,000 or more. Tenants can pressure councils to ensure protection and appeal council decisions to the OMB. Also, some provisions regarding conversions to condominiums and co-operatives do apply in all municipalities.

Options Considered

The consultation paper considers the following options. One is to continue the current system which relies on municipal enforcement of RHPA. This would continue to let municipalities, where the RHPA applies, to apply existing rules. It is noted that increased pressure to cover and demolish rental units will lead to some landlords attempting illegal demolitions, conversion and renovations and that additional municipal enforcement may be required at the municipal level. The paper criticises that this system relies on tenants to make their concerns known to councils and also that there is an unevenness to the approach because municipalities with less than 50,000 population are not covered for demolitions or renovations.

A second option is to have continued municipal enforcement of the RHPA but with stronger provincial direction. The Ministry could be "more directive in its comments to municipalities on applications under the RHPA, and would appeal municipal decision to the OMB whenever the Ministry disagreed. The Ministry could provide greater education activities and more enforcement support where appropriate.

A final option is to revert administration of the RHPA to the provincial level either directly or through a Board. Currently applications are processed and decisions are made by local municipalities. This approach would have decisions be made by either provincial administrators or a quasi-judicial hearings board. Decision-making by a quasi-judicial board would require a clear and explicit written provincial policy on protection of rental housing to ensure the government's intent is carried out. This approach could ensure reasonably consistent administration of rental stock and tenant protection and some municipalities would be relieved to have this responsibility removed from the local level. Alternatively, provincial decision-makers might not be as accessible to tenants and landlords as at the local level and some municipalities would be opposed to the removal of a previously local responsibility.

Preferred Approach

Continue municipal administration with stronger provincial direction.

AMO's Response to Preferred Approach

AMO did not support the establishment of the *Rental Housing Protection Act*; initially the Association had recommended that the Province repeal the *Act* and introduce alternative measures in legislation such as the *Planning Act* and the *Landlord and Tenant Act* and rent review process. AMO argued that the blanket approach of the *Act* was inappropriate and infringed on the local autonomy of municipalities.

AMO stated that every community has its own unique housing situation and, as the local level of government, municipal councils are best able to respond to the housing needs of their community; therefore applying the *Act* province-wide not only ignores local and regional differences in the housing market, but also completely overrules and discards any existing policies a municipal council may already have in place to respond to local housing conditions.

AMO proposed that one area of modification would be to make the *Act* permissive, rather than mandatory. This would enable the *Act* to be targeted to those areas where condominium conversions pose a real problem to the local housing supply. Such an amendment would recognize that rental housing conversions are a problem only in certain parts of the

province. If the Province did not repeal the *Act*, AMO supported making the *Rental Housing Protection Act* permissive and giving municipalities the option to adopt those controls which local officials feel are appropriate in their area.

Municipalities currently must enforce the provisions of the RHPA. The *Act* provides that municipalities can charge an applicant a fee for processing a request. However, experience has demonstrated that the fee a municipality can charge does not nearly address the costs of processing an application. Some municipalities have estimated that if true costs were applied a several thousand dollar fee would be levied and even the most deserving application would not proceed. Therefore, AMO already believes that municipalities are not sufficiently reimbursed for enforcing the Provinces RHPA provisions. AMO's position is that the Provincial Government should ensure full costs are covered and that the same should apply to costs related to the new rent control legislation.

It is against this background that AMO now evaluates the preferred approach of continuing municipal administration with "stronger provincial direction". AMO maintains its past position that the *Act* infringes on the local autonomy of municipalities and is inappropriate for most municipalities in the province. Therefore, AMO is opposed to any expansion of the *Act* or further provincial intrusion into local housing policies.

The consultation paper describes stronger provincial direction as involving the Ministry being more "directive in its comments to municipalities on applications under the RHPA", and "appeal of municipal decisions to the OMB whenever the Ministry disagreed." In its response to the RHPA the Association's position was that the criteria for approval should be as flexible as possible in order for municipalities to be able to interpret and apply criteria to local circumstances. This increased provincial direction effectively adds additional criteria and further reduces the discretion of municipal councils.

2.9.2 Extend coverage of RHPA to smaller municipalities

Options Considered

The consultation paper discusses one option under this, that municipalities could be covered based on different criteria such as inclusion within certain housing market areas. For example, smaller municipalities that are part of larger metro areas like Ajax. It is noted that some smaller municipalities have limited resources for administering new responsibilities and generally do not perceive that they have a rental housing problem.

Preferred Approach

Extend RHPA coverage to smaller municipalities in larger metropolitan areas.

AMO's Response to Preferred Approach

AMO's past position was that the *Rental Housing Protection Act* is a response to the housing conversion problem in large urban municipalities. In response to this the RHPA was changed from including **all** municipalities over 25,000 population to **all** municipalities over 50,000 population required to deal with all changes of use of rental housing, and with condominium conversions, whether or not a particular problem exists in their municipality.

AMO is concerned with both the vagueness of the criterion proposed and the possibility that this represents an increasing extension of this provincial policy across all municipalities. Therefore, AMO's position is that the coverage of the RHPA should not be changed.

2.9.3 Change the criteria that municipalities must consider when considering an application

Under the RHPA a municipal council may approve an application if at least one of the following criteria is met:

- If demolition is proposed, and the rental property is structurally unsound; or if renovation is proposed and the building is structurally unsound and occupied by tenants, vacant possession may be required to do renovations or repairs.

- The applicant agrees to provide accommodation of a similar rent and quality in the same area for tenants who are evicted; and to provide the same

number of new rental units in a similar rental range in the same area.

- In the opinion of council, the proposal will not adversely affect the supply of affordable rental housing in the municipality.

Options Considered

The first option considered is to provide greater certainty in the protection of the rental housing stock and tenants by changing the mandatory approval criteria to include:

- Adding a criterion requiring tenant approval.
- Requiring applicants to show why they cannot meet the second criterion -- replacing rental units with new units at similar rent and rehousing tenants in other units at similar rents --before a municipality can use criterion three (no adverse affect on supply) for approval.
- Revising the third criterion leaving less discretion to municipal councils to determine the meaning of "adversely affected" supply of affordable rental housing.
- Introducing mandatory protection for tenants, including continued tenure for a period of time, cost of moving and special provisions that may be appropriate in a given case.

The consultation paper notes that these would enhance the protection of the rental stock but that tenant approval and mandatory protective measures "could add a heavy administrative burden to municipalities which would have to monitor voting and tenant protective measures."

A second option is mandatory "linkage" payments to be made to municipal or provincial housing funds to replace rental units that are allowed to be removed; this could assist in replacing units removed from the affordable rental sock and several municipalities are already using this approach in conjunction with new development approvals.

Preferred Approach

Municipalities be given authority to require payments for conversion or demolition. These payments would be

directed to municipal housing corporations for the provision of new rent units.

AMO's Response to Preferred Approach

AMO supports the preferred approach but notes the following issues need first be addressed:

- not all municipalities have housing corporations to which they could direct such funds;
- there should be flexibility in the use of these funds, for example the allocation of money to the rehabilitation of units; and,
- need to ask whether this would discourage redevelopment in smaller centres.

2.9.4 Extend RHPA to cover smaller rental properties and condominiums

Section 3(2) of the RHPA exempts buildings with 4 or less units and all registered condominiums; rented condo units can therefore be converted to other uses such as owner occupancy, suite hotel or commercial uses without RHPA approval.

Options Considered

The first option considered is to cover properties with less than 4 units; it is noted that "municipalities might object to this extension because it would extend protection to many illegal units especially if properties with only 2 / 3 units are covered. It could also discourage small property owners from bringing units into the rental market and discourage new home owners who can only afford ownership if they can rent our one or two units."

A second option is to extend RHPA to include rented condominiums.

Preferred Approach

No further change.

AMO's Response to Preferred Approach

AMO agrees with no change to the exemption of buildings with four or less units.

2.9.5 Extend coverage of RHPA to mobile home parks and land lease communities

The RHPA only covers mobile home parks and land lease communities in very limited circumstances. It is argued that residents are vulnerable to conversion to other uses or to co-operatives.

Options Considered

The consultation paper considers one option, the extension of the RHPA to these properties against conversion to co-operatives, condominiums or redevelopment of the land for non-residential use. This coverage could be extended either in all municipalities or only in scheduled municipalities (i.e. municipalities with more than 50,000 population).

It is noted that this could create a disincentive for municipalities to approve new mobile home parks if eventual redevelopment is impeded. It would also discourage landowners from establishing new parks or communities for same reasons. The paper argues that the problem with these types of accommodations is that many of these are in rural municipalities that are not subject to the RHPA; as well, mobile homes are believed to have limited life span and sometimes need to be replaced.

Preferred Approach

Refer the issue to an interministerial committee which is currently looking at these types of residential units and wait for their report. It is noted that these units are currently under rent control.

AMO's Response to Preferred Approach

AMO supports the Preferred Approach.

2.9.6 Extend court powers to order return of illegally renovated units to former configuration and to reinstate tenants at former rents

This issue covers cases such as the reconfiguration of a rooming house to self-contained apartments.

Preferred Approach

Extend powers to reinstate tenants in renovated units and order renovated units converted to their original configuration.

AMO's Response to Preferred Approach

The Association has no comment on this item as it is primarily a landlord-tenant issue and a matter of provincial policy.

2.9.7 RHPA and renovations and repairs requiring vacant possession

The RHPA allows municipal controls over renovations and repairs extensive enough to require vacant possession even if there is no change in the total number of units; this was included to allow control of luxury renovations.

Options Considered

The consultation paper discusses one option, that if the new legislation permits some acceptable treatment of "necessary" or "minimum standard" capital expenditures, and particularly if capital projects are reviewed by some government agency for eligibility, then it would be redundant to require RHPA approval as well. RHPA approval would be required only where the renovation resulted in a change in number of units and the municipality would then consider the impact on the supply of affordable rental housing. This would control the loss of affordable rental units but would provide no opportunity for municipalities to impose conditions to assist tenants required to vacate as a result of necessary renovations that do not change the number of rental units.

Preferred Approach

The RHPA coverage should be eliminated for renovations and repairs where the number of units does not change if capital expenditures are provided for under rent control legislation.

AMO's Response to Preferred Approach

AMO agrees with the Preferred Approach.

3 Summary

AMO has focused its response on the municipal responsibilities suggested in the consultation paper and impacts on the municipal sector as a result of the proposed policy options and approaches. As discussed in the introduction, AMO's main positions are:

Rent Control Policy - A Provincial Responsibility

Continue Precedence of Municipal Property Standards Bylaws

Support a Mechanism for Approving Necessary Capital Expenditures

No Additional Costs to Municipalities

Continued AMO Representation in New System

Support Local Policies for Rental Housing Protection

AMO looks forward to providing further input and consultation on rent control issues which have an impact on the municipal sector and its responsibilities.

4 Bibliography of AMO Reports

Association of Municipalities of Ontario. *AMO's Response to "Rental Housing Protection Act: Future Directions."* Toronto: AMO, September 1988. AMO Report 88-8.

_____ *Response to the Rental Housing Protection Act.* Toronto: AMO, January 1987. AMO Report 87-4.

5 Acknowledgements

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